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March 12, 2003

**Via Hand Delivery**

Ms. Marlene H. Dortch

Secretary

Federal Communications Commission

445 12th Street, S.W.

Washington, DC 20554

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MAR 12 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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\*\* MA BAR ONLY  
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+ IL BAR ONLY  
++ LEGISLATIVE, NON-LAWYER

**Re: Ex Parte Presentation in MB Docket No. 02-144  
Mediacom Communications Corporation**

Dear Ms. Dortch:

On behalf of Mediacom Communications Corporation, submitted herewith pursuant to Section 1.1206(b)(2) of the Commission's rules are an original and one copy of this notice regarding a permitted *ex parte* presentation in the above-referenced proceeding. On March 11, 2003, Arthur H. Harding and Lisa Chandler Cordell, Fleischman and Walsh, L.L.P., met separately with Susan Eid, Legal Advisor to Chairman Michael K. Powell; Stacy Robinson, Legal Advisor to Commissioner Kathleen Q. Abernathy; and William H. Johnson, Marjorie Reed Greene, Mary Beth Murphy, Steven Broeckert, John Norton, Katie Costello and Susan Mort of the Media Bureau.

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Ms. Marlene H. Dortch

March 12, 2003

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The points emphasized by Mediacom's counsel in this presentation are set forth in the enclosed *summary*. Please direct any questions regarding this notice to the undersigned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lisa Chandler Cordell".

Lisa Chandler Cordell

cc: Susan Eid, Office of the Chairman  
Stacy Robinson, Office of Commissioner Abemathy  
William H. Johnson, Media Bureau  
Marjorie Reed Greene, Media Bureau  
Mary Beth Murphy, Media Bureau  
Steven Broeckaert, Media Bureau  
John Norton, Media Bureau  
Katie Costello, Media Bureau  
Susan Mort, Media Bureau

cc: Wanda Hardy, Media Bureau  
Qualex International

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## **EFFECTIVE COMPETITION STREAMLINING**

(MB Docket No. 02-144)

### **MEDIACOM BACKGROUND**

- Began in 1996.
- Currently **8<sup>th</sup>** largest cable MSO.
  - ▶ Approximately 2.7 million homes passed.
  - ▶ Approximately 1.6 million basic customers.
  - ▶ Serves around 1,500 small and mid-sized communities in 23 states.
  - ▶ 85% of systems serve 2,000 or fewer subscribers.
- Has invested over \$1 billion to upgrade its systems.
- Over 94% of Mediacom's plant has been upgraded to provide digital video, high-speed Internet access, video-on-demand and high definition television.

### **COMPETITION IS FLOURISHING**

- DBS now accounts for more than 20% of all MVPD subscribers.
    - ▶ More than 150% increase in DBS subscribers since 1998.
    - ▶ Numerous independent forecasters predict continued growth for DBS and decline in cable's share.
    - ▶ In his statement issued in connection with the EchoStar/DirecTV merger proceeding, Chairman Powell has recognized that DBS is a "viable competitor in every market in the country," with growth rates "2.5 times larger than those of cable."
  - Mediacom faces overbuilders in several communities.
    - ▶ Often municipally owned.
    - ▶ Typically enjoy economic advantages due to subsidization from local tax dollars or monopoly municipal utility revenue.
-

- Mediacom’s competitors typically do not face the same costly regulatory obligations.
  - ▶ Often do not need a franchise.
  - ▶ No institutional network mandates
  - ▶ No public, educational and governmental channel obligations.
  - ▶ No leased access requirements.
  - ▶ No franchise fee payments.
  - ▶ No rate regulation.
  - ▶ No customer service standards.

### **THE EFFECTIVE COMPETITION PROCESS SHOULD BE STREAMLINED**

- Would permit ready recognition of undisputed facts and focus attention on truly material elements of proof.
- Would ease administrative burdens on cable operators and FCC staff alike.
- Should clear up confusion among local franchising authorities (“LFAs”), thereby reducing oppositions.
- Would promote timely, efficient and consistent action by Commission.

### **THE BURDEN OF PROOF SHOULD BE NEUTRAL**

- Assigning the burden of proof was a close call even back in 1994.
- Competitive landscape has changed dramatically.
- Effective competition determinations should be based on a preponderance of the evidence.
  - ▶ Unopposed petitions could be granted automatically at close of comment period.
  - ▶ LFAs seeking to regulate rates for the first time would have to show the absence of effective competition by a preponderance of the evidence, much as they are required to do when re-certifying after a finding of effective competition.

## **EFFECTIVE COMPETITION FINDINGS BASED ON THE PRESENCE OF DBS PROVIDERS CAN BE SIMPLIFIED**

- The Commission should take official notice that DirecTV and EchoStar satisfy the first prong of the 50/15 competing provider test.
  - ▶ The Commission has repeatedly recognized that DBS is technically available throughout the continental United States.
  - ▶ There are no regulatory, technical or other impediments to the receipt of DBS service.
  - ▶ DirecTV and EchoStar unquestionably offer programming “comparable” (as defined by the FCC rules) to that of any cable operator.
  - ▶ It is beyond dispute that U.S. consumers today are universally “reasonably aware” of the availability of DBS service.
- DirecTV, EchoStar and retailers that offer their products advertise and market extensively through national, regional and local media, including newspapers and magazines, television and radio, and the Internet, as well as by means of point-of-purchase brochures, door hangers, direct mail solicitations, and e-mail.
  - \* According to its most recent 10-K filing with the Securities and Exchange Commission, EchoStar spent well over \$100 million on advertising and related expenses a year, and had overall marketing expenses exceeding \$1 billion a year, for 2000 and 2001.
  - \* Multichannel News reports that, in support of its Fall 2002 “NFL Sunday Ticket” promotion alone, DirecTV planned to air spots on national broadcast and cable networks, including runs during NFL games. Print ads were slated for USA Today, Parade, USA Weekend and local newspapers in 41 markets. Radio spots were scheduled in 27 markets.
  - \* According to VMS, a media tracking service, there have been over 200 national and local ads on broadcast and cable channels since January 2002 for DirecTV and EchoStar’s Dish Network.

- The fact that DBS penetration in the United States now exceeds 20 percent justifies official notice by the Commission that potential subscribers are reasonably aware of this service.
  - Where DBS subscribership in a particular community exceeds 15%, consumers obviously are reasonably aware of the availability of DBS.
- The Commission should expressly confirm that SkyTRENDS data may be relied upon in effective competition showings.

**EFFECTIVE COMPETITION RELIEF SHOULD NOT BE LIMITED TO THE  
“LARGEST” PROVIDER IN A COMMUNITY**

- Currently, the FCC requires a showing that the combined penetration of all MVPDs “other than the largest” exceeds 15 percent.
- Given that SkyTRENDS refuses to disclose the breakdown between DirecTV and EchoStar, it is often difficult to prove which MVPD is the largest.
- Congress could not reasonably have intended to preclude effective competition relief to MVPDs other than the “largest.”
- Thus, effective competition relief should be available to any MVPD, regardless of whether it is the largest, so long as it demonstrates that it faces competition **from** one **or** more competing MVPDs with aggregate penetration of 15% or more.